

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Ethan De Angelo	Team: Squad #1	CCRB Case #: 201502152	<input type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Monday, 03/16/2015 11:30 PM, Wednesday, 04/01/2015	Location of Incident: East 214th Street and Barnes Avenue; 4644 White Plains Road	Precinct: 47	18 Mo. SOL 9/16/2016	EO SOL 9/16/2016	
Date/Time CV Reported Tue, 03/24/2015 1:25 AM	CV Reported At: CCRB	How CV Reported: Call Processing System	Date/Time Received at CCRB Tue, 03/24/2015 1:25 AM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Bennett Shelley	18552	947489	047 PCT
2. POM Michael Whelan	27703	948440	047 PCT
3. LT Michael Raso	00000	933235	047 PCT
4. An officer			047 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Leonard Armstrong	15037	956204	047 PCT
2. SGT Thomas Casey	01549	918830	047 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Michael Whelan	Abuse: On March 16, 2015, PO Michael Whelan stopped § 87(2)(b) in the vicinity of East 214th Street and Barnes Avenue in the Bronx.	
B.POM Bennett Shelley	Abuse: On March 16, 2015, PO Bennett Shelley frisked § 87(2)(b) in the vicinity of East 214th Street and Barnes Avenue in the Bronx.	
C.POM Bennett Shelley	Abuse: On March 16, 2015, PO Bennett Shelley searched § 87(2)(b) in the vicinity of East 214th Street and Barnes Avenue in the Bronx.	
D.POM Bennett Shelley	Discourtesy: On March 16, 2015, PO Bennett Shelley spoke rudely to § 87(2)(b) in the vicinity of East 214th Street and Barnes Avenue in the Bronx.	
E.POM Bennett Shelley	Abuse: On March 16, 2015, PO Bennett Shelley searched the car in which § 87(2)(b) was an occupant in the vicinity of East 214th Street and Barnes Avenue in the Bronx.	
F. An officer	Abuse: On March 16, 2015, An officer searched the car in which § 87(2)(b) was an occupant in the vicinity of East 214th Street and Barnes Avenue in the Bronx.	
G.LT Michael Raso	Abuse: On April 1, 2015, Lt. Michael Raso frisked § 87(2)(b) outside of 4644 White Plains Road in the Bronx.	

Officer(s)	Allegation	Investigator Recommendation
H.LT Michael Raso	Abuse: On April 1, 2015, Lt. Michael Raso searched § 87(2)(b) outside of 4644 White Plains Road in the Bronx.	
I.LT Michael Raso	Abuse: On April 1, 2015, Lt. Michael Raso searched the car in which § 87(2)(b) was an occupant of outside of 4644 White Plains Road in the Bronx.	
J.POM Bennett Shelley	Abuse: On April 1, 2015, PO Bennett Shelley frisked § 87(2)(b) outside of 4644 White Plains Road in the Bronx.	
K.POM Bennett Shelley	Abuse: On April 1, 2015, PO Bennett Shelley searched the car in which § 87(2)(b) was an occupant outside of 4644 White Plains Road in the Bronx.	
L.LT Michael Raso	Discourtesy: On April 1, 2015, Lt. Michael Raso spoke rudely to § 87(2)(b) outside of 4644 White Plains Road in the Bronx.	
M.LT Michael Raso	Discourtesy: On April 1, 2015, Lt. Michael Raso spoke rudely to § 87(2)(b) outside of 4644 White Plains Road in the Bronx.	
§ 87(4-b), § 87(2)(g)		

Case Summary

On March 16, 2015, at 11:30 p.m., § 87(2)(b) was standing on Barnes Avenue between East 214th and East 215th Street in the Bronx, speaking with an acquaintance named § 87(2)(b). An unmarked black police car pulled up to § 87(2)(b) and § 87(2)(b) with three plainclothes officers inside, identified via the investigation as PO Michael Whelan, PO Bennett Shelley, and Sgt. Thomas Casey all of the 47th Precinct. PO Whelan asked § 87(2)(b) for his name, and after he allegedly provided it, the officers exited their vehicle and walked up to § 87(2)(b) and § 87(2)(b) (**Allegation A**). § 87(2)(b) recognized PO Shelley from a previous incident in which PO Shelley arrested § 87(2)(b) for possession of a loaded firearm (See Board Review #8). PO Shelley then stopped and frisked § 87(2)(b) (**Allegation B**). PO Shelley also allegedly searched § 87(2)(b) reaching into his pants pockets and removing his car keys (**Allegation C**). § 87(2)(b) asked PO Shelley why the officers were harassing him, and PO Shelley allegedly responded, “Shut the fuck up and keep your hands in the air,” (**Allegation D**). PO Shelley took § 87(2)(b)’s car keys, unlocked his vehicle, and then allegedly searched the trunk while an unidentified officer allegedly searched the front passenger seat (**Allegations E and F**). The officers then left without arresting § 87(2)(b) or § 87(2)(b) or issuing either of them a summons.

On April 1, 2015, at 1:37 a.m., § 87(2)(b) parked his vehicle in a no standing zone in front of 4644 White Plains Road in the Bronx. His friend, § 87(2)(b) exited his vehicle and walked across the street to the 50/50 Convenience Store. § 87(2)(b) exited his vehicle thirty seconds later and started walking across the street to the store. An unmarked black RMP with two plainclothes officers inside identified via investigation as PO Bennett Shelley and Lt. Michael Raso of the 47th Precinct, drove past § 87(2)(b) made a u-turn, and then drove back towards him. Lt. Raso told § 87(2)(b) to go back to his vehicle two times, and each time § 87(2)(b) asked him why. Lt. Raso then opened his door, exited his vehicle, and approached § 87(2)(b). He then grabbed § 87(2)(b) by the belt loop and pulled him back to his vehicle where he frisked him (**Allegation G**). Lt. Raso then allegedly asked § 87(2)(b) where his car keys were and when § 87(2)(b) told him that they were in his back pocket, Lt. Raso allegedly removed the keys from his pocket, and then proceeded to search his car (**Allegations H and I**). While Lt. Raso was searching § 87(2)(b)’s car, PO Shelley approached and frisked § 87(2)(b) (**Allegation J**). PO Shelley then switched places with Lt. Raso and allegedly searched § 87(2)(b)’s car (**Allegation K**). § 87(2)(b) said that he was going to file a complaint against the officers, and Lt. Raso allegedly replied, “You always fucking file a complaint,” (**Allegation L**). As § 87(2)(b) approached § 87(2)(b) and the officers, Lt. Raso allegedly said to him, “What the fuck are you doing here?” (**Allegation M**). § 87(2)(b) was issued a summons for § 87(2)(b) (See Board Review #6).

An IAB spinoff was created for harassment, as § 87(2)(b) alleged that PO Shelley stops him on a regular basis without cause.

This case was initially assigned to Investigator Joshua Brickell, but was reassigned to the undersigned on May 4, 2015, upon Inv. Brickell’s departure from the agency.

Mediation, Civil and Criminal Histories

- As an IAB spinoff was generated for harassment, this complaint was ineligible for mediation.
- § 87(2)(b), § 87(2)(a) 160.50
§ 87(2)(b)
§ 87(2)(b)
§ 87(2)(b)

- § 87(2)(b)
- § 87(2)(b)

Civilian and Officer CCRB Histories

- This is the first CCRB complaint involving § 87(2)(b) and § 87(2)(b) (See Board Review # 1).
- § 87(2)(b)
- PO Michael Whelan has been a member of the service for six years and there are five substantiated CCRB allegations, stemming from one complaint, against him.
 - PO Whelan has had complaints involving stops (3), frisks (2), and searches (2).
 - In case number 201400419, a vehicle stop, vehicle search, frisk, search, and question allegation were plead against PO Whelan, and all of the allegations were closed as substantiated. The CCRB recommended charges, and as a result the NYPD issued him a Command Discipline.
- Lt. Michael Raso has been a member of the service for 12 years, and there are four substantiated CCRB allegations, stemming from three separate complaints, against him.
 - Lt. Raso has had complaints involving stops (3), frisks (2), vehicle stops (3), vehicle searches (5), and searches (5).
 - In case number 200801117, a stop, a gun pointed, and force allegation was pled against PO Raso. The force allegation was closed as exonerated while the stop and gun pointed allegations were closed as substantiated. The CCRB recommended charges, and the NYPD issued Lt. Raso instructions.
 - In case number 200902991, a vehicle stop and a vehicle search allegation were pled against Lt. Raso. The vehicle stop allegation was closed as substantiated while the vehicle search allegation was closed as unsubstantiated. The CCRB recommended charges and the NYPD issued instructions to Lt. Raso.
 - In case number 201106779, a vehicle stop, a vehicle search, two force allegations, and a strip-search allegation were pled against Lt. Raso. The two force allegations were closed as unsubstantiated, the vehicle search and strip-search allegations were closed as exonerated, and the vehicle stop allegation was closed as substantiated. The CCRB recommended charges however no penalty was issued as a result of the SOL expiring.
- PO Bennett Shelley has been a member of the service for six years and there is one substantiated CCRB allegation against him.
 - PO Shelley has had numerous complaints involving stops (2), frisks (1), searches (3) and vehicle searches (3).
 - In case number 201002667, a vehicle stop, frisk, and search were pled against PO Shelley. The vehicle stop was closed as exonerated, the frisk was closed as substantiated and the search was closed as unsubstantiated. The CCRB recommended charges, and the NYPD issued instructions to PO Shelley.

Potential Issues

- § 87(2)(b) alleged that during his interaction with PO Shelley, PO Whelan, and Sgt. Casey on March 16, 2015, he was with § 87(2)(b) Multiple contact attempts were made

to § 87(2)(b) however he was unavailable (see IA's). § 87(2)(b) alleged that during his interaction with Lt. Raso and PO Shelley on April 1, 2015, he was with § 87(2)(b) was scheduled for multiple interviews; however he was uncooperative (See IA's.)

Findings and Recommendations

Explanation of Subject Officer Identification

- PO Shelley acknowledged interacting with § 87(2)(b) on both March 16, 2015 and April 1, 2015. § 87(2)(g)
- PO Whelan acknowledged that he was the first officer to observe § 87(2)(b) and § 87(2)(b) on March 16, 2015, and that it was his decision to stop them. § 87(2)(g)
- Lt. Michael Raso acknowledged interacting with § 87(2)(b) on April 1, 2015. § 87(2)(g)
- § 87(2)(b) alleged that on March 16, 2015, the officer who was the driver of the police car frisked § 87(2)(b) and also searched the front passenger seat. He described this officer as a white male in his early 40's, who stood 6'0" tall, weighed approximately 240 pounds, and was bald. PO Whelan, who was the driver that day, was § 87(2)(b)-old at the time of the incident and is listed as being 6'2" tall, approximately 240 pounds, with black hair. Sgt. Casey was § 87(2)(b)-old at the time of the incident, and is listed as 205 pounds, with brown hair. Sgt. Casey, PO Shelley, and PO Whelan are all listed as white males. § 87(2)(g)

Allegations not pleaded

- Abuse: § 87(2)(b) alleged that while he was being frisked by PO Shelley on March 16, 2015, PO Whelan frisked § 87(2)(b) § 87(2)(g)
- Force: § 87(2)(b) alleged that when Lt. Raso exited his patrol car on April 1, 2015, his car door made contact with § 87(2)(b)'s hand. § 87(2)(b) did not sustain any injuries as a result, and did not seek any medical treatment. § 87(2)(g)
- Abuse: Because § 87(2)(b) was issued a summons for § 87(2)(b) on April 1, 2015, which was the reason cited by Lt. Raso and PO Shelley as the reason for stopping § 87(2)(b) § 87(2)(g)

Finding and Recommendations

Allegation A – Abuse of Authority- On March 16, 2015, PO Michael Whelan stopped

§ 87(2)(b) **in the vicinity of East 214th Street and Barnes Avenue in the Bronx.**

§ 87(2)(b) alleged that while standing at the rear of his parked car with § 87(2)(b) outside of § 87(2)(b)'s home located on Barnes Avenue between East 214th Street and East 215th Street, they were approached by three officers in an unmarked police car. The officers, rolled down their window, said something to § 87(2)(b) and then exited their car and approached them.

PO Whelan, who was the driver that day, testified that he was the first officer to observe § 87(2)(b) and § 87(2)(b) and that he made the decision to approach § 87(2)(b) because § 87(2)(b)'s car was illegally parked in front of a fire hydrant and he was going to tell them to move the car. After PO Whelan pulled up to them, he asked § 87(2)(b) for his name, at which point § 87(2)(b) provided him with a name. While PO Whelan did not remember what the name was, after § 87(2)(b) provided his name, PO Shelley told PO Whelan that he had previously arrested § 87(2)(b) for possession of a loaded firearm, and that the name which he provided was false. At this point PO Whelan, PO Shelley, and Sgt. Casey exited their car and approached § 87(2)(b). He also testified that his decision to stop § 87(2)(b) was informed by the fact that § 87(2)(b) had been previously arrested for possession of a firearm, and that this was a high crime area in which he had personally made felony arrests for violent crimes and felony narcotics sales.

Sgt. Casey and PO Shelley corroborated PO Whelan's testimony.

Police officers can stop individuals who they reasonably suspect are engaged in a crime. People v De Bour, 40 N.Y. 2d. 210 (1976) (See Board Review #04).

§ 87(2)(g)

Allegation B- Abuse of Authority - On March 16, 2015, PO Bennett Shelley frisked § 87(2)(b) in the vicinity of East 214th Street and Barnes Avenue in the Bronx.

§ 87(2)(b) who was wearing jeans and a jacket, alleged that when PO Shelley, PO Whelan, and Sgt. Casey exited their car and approached him, he was standing still with his hands at his sides, and did not make any movements at all. He then put his hands in the air at which point PO Shelley immediately patted down his chest, waistband, and pants leg area.

PO Shelley acknowledged frisking either § 87(2)(b) or § 87(2)(b) immediately upon exiting the car and approaching them. Prior to getting out of the car, when he was approximately half a block away from § 87(2)(b) and § 87(2)(b) PO Shelley testified that he saw one of the them holding an object in their hand. He further testified that as the officers got closer, both § 87(2)(b) and § 87(2)(b) appeared to turn and hide the object. PO Shelley could not describe the object in any manner whatsoever. At the time in which PO Shelley exited his car and approached § 87(2)(b) and § 87(2)(b) he did not see either of them holding an object, nor did he see either of them move their bodies in any way. PO Shelley did not remember whether their hands were visible, or what either § 87(2)(b) or § 87(2)(b) were wearing that night. PO Shelley testified that he frisked § 87(2)(b) because he had provided a false name, his previous experience arresting § 87(2)(b) for possession of a loaded firearm, and because of the object he had previously seen. PO Shelley testified that there was nothing else to indicate that either § 87(2)(b) or § 87(2)(b) were in possession of a weapon. He did not recover anything from either § 87(2)(b) or § 87(2)(b) as a result of the frisk.

PO Shelley's memo book, (See Board Review #12), as well as the Stop, Question and Frisk Report, (See Board Review #13), he prepared for this incident, are consistent in that they both indicate that § 87(2)(b) and § 87(2)(b) were making furtive movements at the time in

which they were stopped. The Stop, Question and Frisk Report regarding § 87(2)(b) indicate that a bulge on his person was determined to be a cell phone.

PO Whelan testified that PO Shelley frisked § 87(2)(b) and § 87(2)(b) upon initially approaching them, and that they did not previously discuss conducting a frisk. PO Whelan testified that the decision to conduct a frisk was, “standard procedure” in a dark area, and that the area in which § 87(2)(b) and § 87(2)(b) had been standing in was poorly lit. PO Whelan did not observe any objects, or bulges on either § 87(2)(b) or § 87(2)(b) and he did not suspect either of them being involved in a violent crime at the time in which they were stopped.

Sgt. Casey testified that as the officers got out of their car and approached § 87(2)(b) and § 87(2)(b) he did not see any objects or bulges on either of their persons, nor did he see if either of them was holding anything in their hands. Sgt. Casey also did not see anything on either § 87(2)(b) or § 87(2)(b) to indicate that either of them was in possession of a weapon.

In order to frisk a person, an officer must have reasonable suspicion that the person stopped is armed and dangerous. Arizona v. Johnson, 555 U.S. 323, 326-27 (2009) (See Board Review #).

According to Patrol Guide Procedure 212-11, an officer may conduct a frisk if they reasonably fear for their safety (See Board Review #2).

§ 87(2)(g)

[REDACTED]

Allegation C- Abuse of Authority - On March 16, 2015, PO Bennett Shelley searched § 87(2)(b) in the vicinity of East 214th Street and Barnes Avenue in the Bronx.

§ 87(2)(b) alleged that upon completion of the frisk, PO Shelley placed his hands inside all of § 87(2)(b)'s jacket and pants pockets. After searching § 87(2)(b) for approximately two to three minutes, PO Shelley removed § 87(2)(b)'s car keys from his pants pockets.

PO Shelley testified that he did not remember whether he removed anything from § 87(2)(b)'s pockets.

The stop, question and frisk report prepared by PO Shelley in regards to this stop, (See Board Review #9) indicates that although a frisk was conducted, a search was not.

Sgt. Casey and PO Whelan both testified that neither § 87(2)(b) nor § 87(2)(b) were searched.

§ 87(2)(g)

Allegation D – Discourtesy-On March 16, 2015, PO Bennett Shelley spoke rudely to § 87(2)(b) in the vicinity of East 214th Street and Barnes Avenue in the Bronx.

§ 87(2)(b) alleged that he asked PO Shelley why PO Shelley was always harassing him, and PO Shelley replied, “Shut the fuck up and keep your hands in the air.”

PO Shelley denied using profanity at any point during this incident and did not tell § 87(2)(b) to, “Shut the fuck up and keep your hands in the air.”

Sgt. Casey and PO Whelan also denied that PO Shelley used profanity at any point during this incident and did not hear him say, “Shut the fuck up and keep your hands in the air,” to § 87(2)(b)

§ 87(2)(b)

§ 87(2)(g)

Allegation E – Abuse of Authority -On March 16, 2015, PO Bennett Shelley searched the car in which § 87(2)(b) was an occupant in the vicinity of East 214th Street and Barnes Avenue in the Bronx.

Allegation F- Abuse of Authority –On March 16, 2015, An officer searched the car in which § 87(2)(b) was an occupant in the vicinity of East 214th Street and Barnes Avenue in the Bronx.

§ 87(2)(b) alleged that after PO Shelley removed his car keys from his pants pockets, he searched the trunk while one of the other officers searched the passenger side of his car (See explanation of subject officer identification section above regarding **Allegations E and F**).

PO Shelley, Sgt. Casey, and PO Whelan all denied searching § 87(2)(b)'s car.

§ 87(2)(g)

Allegation G – Abuse of Authority -On April 1, 2015, Lt. Michael Raso frisked § 87(2)(b) outside of 4644 White Plains Road in the Bronx.

§ 87(2)(b) alleged that as he was crossing White Plains Road, an unmarked police car pulled up to him, and the driver of the car, identified via investigation as Lt. Michael Raso, told him to return to his parked car. § 87(2)(b) asked why he had to return to his car, at which point Lt. Raso and PO Shelley exited their car and approached § 87(2)(b). § 87(2)(b) alleged that he placed his hands in the air and was immediately patted down from his chest to his pant legs by Lt. Raso.

Lt. Raso testified that while on patrol with PO Shelley, he and PO Shelley observed an individual, subsequently identified as § 87(2)(b) urinating near the rear of a parked car. Lt. Raso testified that the area was well lit, and he could clearly see § 87(2)(b) urinating behind the parked car. Lt. Raso turned his car around, approached § 87(2)(b) and from his car told § 87(2)(b) to stop walking. § 87(2)(b) continued walking however, at which point Lt. Raso and PO Shelley exited their vehicle and approached § 87(2)(b). As they exited their car, PO Shelley identified § 87(2)(b) to Lt. Raso and told him that he had previously arrested him for possession of a loaded firearm. Lt. Raso was also familiar with § 87(2)(b)'s arrest history as he was present the day that PO Shelley had arrested § 87(2)(b) for possession of a loaded firearm. Lt. Raso immediately

patted down the chest, waistband, and pants leg area of § 87(2)(b) Lt. Raso testified that he frisked § 87(2)(b) due to the fact that § 87(2)(b) had previously been arrested for possession of a firearm, and because they were going to issue him a summons in lieu of arrest. Other than knowing § 87(2)(b) had been previously arrested for possession of a firearm, he did not suspect § 87(2)(b) of having any weapons on him. He did not see any bulges on § 87(2)(b)'s person, and could clearly see § 87(2)(b)'s hands, which he said were down at his side.

In order to frisk a person, an officer must have reasonable suspicion that the person stopped is armed and dangerous. Arizona v. Johnson, 555 U.S. 323, 326-27 (2009) (See Board Review #4).

According to Patrol Guide Procedure 212-11, an officer may conduct a frisk if they reasonably fear for their safety (See Board Review #2).

§ 87(2)(g)

Allegation H – Abuse of Authority -On April 1, 2015, Lt. Michael Raso searched § 87(2)(b) outside of 4644 White Plains Road in the Bronx.

§ 87(2)(b) alleged that after Lt. Raso patted him down, Lt. Raso asked him where his keys were, and after § 87(2)(b) said they were in his back pants pocket, Lt. Raso reached into his pants pocket and removed the keys.

Lt. Raso denied reaching into § 87(2)(b)'s pants pockets to remove his car keys, and testified that § 87(2)(b) provided him with his car keys so that Lt. Raso could retrieve § 87(2)(b)'s identification from his car.

PO Shelley also denied removing anything from § 87(2)(b)'s pants pockets and did not remember whether § 87(2)(b)'s car keys were given to either him or Lt. Raso.

§ 87(2)(g)

Allegation I – Abuse of Authority -On April 1, 2015, Lt. Michael Raso searched the car in which § 87(2)(b) was an occupant of outside of 4644 White Plains Road in the Bronx.

§ 87(2)(b) alleged that after Lt. Raso searched him, he removed his car keys from his pants pockets, and without § 87(2)(b)'s permission, proceeded to search the front part of his car for approximately 30 seconds.

Lt. Raso testified that when he asked § 87(2)(b) for his identification § 87(2)(b) told him that he did not have it on his person, but that it was inside of his car. Lt. Raso asked § 87(2)(b) if he could retrieve it from § 87(2)(b)'s car, however § 87(2)(b) said no. Lt. Raso then told § 87(2)(b) that if he did not let him retrieve his identification, they would have to take § 87(2)(b) to the stationhouse. § 87(2)(b) then consented to letting Lt. Raso go into his car to retrieve his identification. § 87(2)(b) told Lt. Raso where his identification was, however at the time of his interview Lt. Raso did not remember where specifically inside the car that was. When Lt. Raso

opened § 87(2)(b)'s car and went to retrieve his identification, the identification was not initially where § 87(2)(b) said it would be. Lt. Raso ultimately found § 87(2)(b)'s identification inside of either a jacket or hoodie which was placed on one of the rear seats of the car. Lt. Raso denied searching any other part of § 87(2)(b)'s vehicle, and testified that the sole purpose of the car search was to recover § 87(2)(b)'s identification so that they could write him a summons for public urination.

A warrantless search of a vehicle is permitted when the police have probable cause to believe the vehicle contains contraband, a weapon, or evidence of a crime. **People v. Vargas**, 89 N.Y.S. 2d 931 (2011-2d Dept.) (See Board Review #4). The standard for measuring the scope of a suspect's consent under the Fourth Amendment is that of "objective" reasonableness. Furthermore, a suspect may delimit as he chooses the scope of the search to which he consents. **Florida v. Jimeno**, 500 U.S. 248 (See Board Review #14).

§ 87(2)(g)

[REDACTED]

Allegation J – Abuse of Authority -On April 1, 2015, PO Bennett Shelley frisked § 87(2)(b) outside of 4644 White Plains Road in the Bronx.

§ 87(2)(b) alleged that while Lt. Raso went to search his vehicle, PO Shelley had § 87(2)(b) face away from the vehicle, and proceeded to frisk him in the same manner that Lt. Raso did.

PO Shelley testified that when he approached § 87(2)(b) after observing him urinating behind a parked car, he asked § 87(2)(b) for his identification, and that § 87(2)(b) told him he did not have his identification on him, and that it was inside of his car. Other than disputing that he had urinated in public, PO Shelley described § 87(2)(b)'s demeanor as compliant. PO Shelley then gave § 87(2)(b) a pat down. PO Shelley did not remember what § 87(2)(b) was wearing that day, did not remember if § 87(2)(b) had anything in his hand, and did not remember if he saw any bulges on § 87(2)(b)'s person at the time of the frisk. PO Shelley testified that he frisked § 87(2)(b) because of his previous experience arresting § 87(2)(b) for possession of a loaded firearm.

In order to frisk a person, an officer must have reasonable suspicion that the person stopped is armed and dangerous. **Arizona v. Johnson**, 555 U.S. 323, 326-27 (2009) (See Board Review #4).

According to Patrol Guide Procedure 212-11, an officer may conduct a frisk if they reasonably fear for their safety (See Board Review #2).

§ 87(2)(g)

Allegation K – Abuse of Authority -On April 1, 2015, PO Bennett Shelley searched the car in which § 87(2)(b) was an occupant outside of 4644 White Plains Road in the Bronx.

§ 87(2)(b) alleged that after Lt. Raso finished searching his vehicle, he switched places with PO Shelley and PO Shelley searched his car. § 87(2)(b) did not see where PO Shelley searched however, as he alleged that Lt. Raso had him turn and face away from his car.

PO Shelley testified that after § 87(2)(b) told him that his identification was in his car, either he or Lt. Raso went into § 87(2)(b)'s car and retrieved the identification. PO Shelley did not remember where the identification was retrieved from, and denied searching § 87(2)(b)'s car.

As discussed above, Lt. Raso acknowledged that he entered § 87(2)(b)'s car and searched it in order to retrieve § 87(2)(b)'s identification.

§ 87(2)(g)

Allegation L – Discourtesy - On April 1, 2015, Lt. Michael Raso spoke rudely to § 87(2)(b) outside of 4644 White Plains Road in the Bronx.

§ 87(2)(b) alleged that after Lt. Raso and PO Shelley were finished searching his car, Lt. Raso said, “You always fucking file a complaint.”

Lt. Raso testified that when he and PO Shelley first approached § 87(2)(b) said, “My lawyer told me to file a CCRB every time I see you.” Lt. Raso noted this statement in one of the memo book entries he made regarding this interaction (See Board Review #7). Lt. Raso denied however using any profanity at § 87(2)(b) and did not say to him, “You always fucking file a complaint.”

PO Shelley also denied using profanity at § 87(2)(b) and did not hear Lt. Raso say, “You always fucking file a complaint.”

§ 87(2)(g)

Allegation M – Discourtesy - On April 1, 2015, Lt. Michael Raso spoke rudely to § 87(2)(b) outside of 4644 White Plains Road in the Bronx.

§ 87(2)(b) alleged that as § 87(2)(b) walked towards § 87(2)(b) and the officers, Lt. Raso stated, “What the fuck are you doing here? Mind your business.”

§ 87(2)(b) was uncooperative with this investigation and did not provide a statement.

Lt. Raso denied using profanity at § 87(2)(b) or any other civilian during this incident. He also denied interacting with an individual who matched § 87(2)(b)'s description.

PO Shelley denied hearing Lt. Raso use profanity at § 87(2)(b) or any other individual during this interaction.

§ 87(2)(g)

§ 87(2)(g)

§ 87(4-b), § 87(2)(g)

Squad: _____

Investigator: _____
Signature Print Date

Supervisor: _____
Title/Signature Print Date

Reviewer: _____
Title/Signature Print Date

Reviewer: _____
Title/Signature Print Date